

OCT 18 2001

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE  
BY Kath

In the Matter of: ) Docket No. 01A-191-INS  
THOMAS A. CADY ) **ORDER**  
Respondent. )

On October 16, 2001, the Office of Administrative Hearings, through Administrative Law Judge Gregory L. Hanchett, issued a Recommended Decision of Administrative Law Judge ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The recommended Findings of Fact and Conclusions of Law are adopted.
2. Respondent's license shall be revoked effective the date of this Order.

NOTIFICATION OF RIGHTS

Pursuant to A.R.S. § 41-1092.09, the aggrieved party may request a rehearing with respect to this order by filing a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office

1 of Administrative Hearings of the appeal within ten days after filing the complaint commencing the  
2 appeal, pursuant to A.R.S. § 12-904(B).

3 DATED this 17<sup>th</sup> of October, 2001

4 

5 Charles R. Cohen  
6 Director of Insurance

7 A copy of the foregoing mailed  
8 this 18<sup>th</sup> day of October, 2001

9 Sara M. Begley, Deputy Director  
10 Gerrie L. Marks, Executive Assistant for Regulatory Affairs  
11 Mary Butterfield, Assistant Director  
12 Catherine O'Neil, Legal Affairs Officer  
13 Del Wisecarver, Supervisor ✓  
14 Bob Hill, Investigator  
15 Arizona Department of Insurance  
16 2910 N. 44th Street, Suite 210  
17 Phoenix, AZ 85018

18 Office of Administrative Hearings  
19 1400 W. Washington, Suite 101  
20 Phoenix, AZ 85007

21 Shelby Cuevas  
22 Assistant Attorney General  
23 1275 W. Washington  
24 Phoenix, AZ 85007

Thomas A. Cady  
11093 E. Hedgehog Place  
Scottsdale, AZ 85255

Thomas A. Cady  
24867 N. 119<sup>th</sup> Place  
Scottsdale, AZ 85255-5929

Foremost Property and Casualty Insurance Company  
Foremost Insurance Company of Grand Rapids, MI  
P.O. Box 2450  
Grand Rapids, MI 49501-2450

1 Sun Life Insurance Company of Canada (U.S.)  
2 One Sun Life Executive Park  
3 Wellesly Hills, MA 02181  
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*Kathy Linder*

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No. 01A-191-INS

**RECOMMENDED DECISION  
OF ADMINISTRATIVE  
LAW JUDGE**

**HEARING:** September 26, 2001.

**ADMINISTRATIVE LAW JUDGE:** Gregory L. Hanchett

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007  
(602) 542-9826



1 In addition, the undersigned notes that Respondent failed to appear at the  
2 hearing having been duly notified of the date, time and place of said hearing.  
3 Respondent's failure to appear came after his motion to continue, which was denied  
4 based upon a failure to present cause for such a continuance, was denied.  
5 Respondent notified the tribunal that he would not be attending the hearing in a  
6 document wherein he objected to the denial of the continuance and asserted that the  
7 continuance should be granted. Respondent did not articulate sufficient specific cause  
8 to reconsider the earlier denial of the motion to continue in Respondent's objection to  
9 the denial of continuance. Furthermore, Respondent, despite the passage of nearly  
10 two weeks after the original denial of the motion to continue, did not file the objection  
11 until two days before the hearing. Accordingly, the hearing proceeded in Respondent's  
12 absence.

#### 13 FINDINGS OF FACT

14  
15 1. Respondent has been at all times material to this appeal licensed to transact  
16 property and casualty insurance as an agent and broker pursuant to License Number  
17 85938.

18 2. From and after December 1, 1999, Respondent transacted insurance  
19 business under the assumed business name of Express America Insurance Company.  
20 According to the testimony of the Department's investigator, Mr. Bob Hill, a review of  
21 the Department's records reveals that Respondent never filed a certificate of assumed  
22 business name for Express America Insurance Company. Mr. Hill's testimony was  
23 substantiated by a copy of a "License File Inquiry" generated by a computer search of  
24 the Department's data base which was admitted into evidence at the hearing. the  
25 document fails to reveal that Respondent ever filed a certificate of assumed business  
26 name for the entity "Express America Insurance Company."

27 3. On October 7, 1999, Respondent filed an application with the Department to  
28 obtain a property and casualty license.  
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1           4. One of the questions asked by the license application was whether  
2 Respondent had ever had any judgment, order, or other determination. . .issued or  
3 made against you. . .in an administrative proceeding. . .of any kind in any jurisdiction  
4 based on any of the following: 1. Misappropriation, conversion, of the withholding of  
5 monies? 2. Incompetence or a source of injury and/or loss to anyone? 3. Dishonesty  
6 in business or financial matters?" Respondent responded "No" to all three questions.  
7 In addition, the application asked Respondent whether he had ever had a professional  
8 license or business license suspended, revoked, or refused or a fine imposed by any  
9 public authority. To this, Respondent also stated "No."

10           5. On February 7, 2000, Respondent filed an application for a life and disability  
11 insurance agent's license. Like the October, 1999 application, this application asked  
12 Respondent whether he had ever had "any judgment, order, or other determination. . .  
13 issued or made against you. . .in an administrative proceeding. . .of any kind in any  
14 jurisdiction based on any of the following: 1. Misappropriation, conversion, of the  
15 withholding of monies? 2. Incompetence or a source of injury and/or loss to anyone?  
16 3. Dishonesty in business or financial matters?" Respondent again responded "No" to  
17 all three questions. In addition, the application asked Respondent whether he had ever  
18 had a professional license or business license suspended, revoked, or refused or a fine  
19 imposed by any public authority. To this, Respondent again stated "No."

20           6. In fact, at the time he answered these questions, Respondent had already  
21 had a fine imposed against a license which had been issued to him by the Department  
22 of Building and Fire Safety (hereinafter "BFS"). Respondent was the president and  
23 qualifying party of Cady and Associates, dba Crossroads Mobile Homes. Respondent  
24 held a broker/dealer license issued by BFS from 1996 through June 22, 2000. In *Office*  
25 *of Administration v. Cady and Associates dba Crossroads Mobile Homes*, Case No. 99-  
26 00137, Respondent was accused of failing to provide receipts for earnest money  
27 deposits, failing to deposit earnest money in a trust account, failing to retain evidence to  
28 show that the earnest money was not used for anything other than the transaction for  
29  
30



1 which it was deposited, and failing to provide all goods and services to a purchaser. On  
2 November 18, 1999, Respondent entered into a stipulation and order with BFS wherein  
3 Respondent admitted the allegations stated in Paragraph 5, above, and agreed to pay  
4 a fine of \$500.00. In addition, his the license was placed on probation for a period of  
5 two years.

6 7. BFS issued a second citation and complaint against Respondent in *Office of*  
7 *Administration v. Cady and Associates dba Crossroads Mobile Homes*, Case No. 99-  
8 0/373, alleging that Respondent failed to retain true copies of purchase agreements,  
9 failed to write license numbers on purchase agreements, failed to provide receipts for  
10 purchase money agreements, failed to deposit earnest money into a trust account,  
11 failed to maintain a complete set of all earnest money, failed to provide all goods and  
12 services to purchasers, failed to utilize deposits for the purposes for which they were  
13 provided, failed to retain records, failed to report sales to BFS, failed to provide  
14 consumers with certain required notices, and failed to work within the scope of his  
15 license.  
16

17 8. On June 22, 2000, Respondent entered into a consent agreement and order  
18 with BFS in Case 99-0/373 wherein Respondent admitted the allegations contained in  
19 Paragraph 7, above. In addition, Respondent surrendered his BFS license and agreed  
20 not to apply for a new BFS license for a period of five years.

21 9. On October 31, 2000, BFS adopted the recommended decision of an  
22 administrative law judge in the case of *Bennett v. Cady and Associates, Inc., dba*  
23 *Crossroads Mobile Homes*, case number 01F-R001004-BFS. In that matter, the  
24 administrative law judge found that Bennett had agreed to purchase a new mobile  
25 home from Respondent and Respondent had agreed to take Bennett's trade-in, pay off  
26 the existing mortgage on the trade-in, deliver the new home, trim it out and complete  
27 other items on the home. Respondent failed to complete certain items on the home  
28 and the administrative law judge recommended that the BFS recovery fund pay out  
29  
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1 \$5,910.00 to Bennett. In addition, Respondent's BFS license was suspended  
2 contingent on Respondent's repayment of the recovery fund.

3 10. On November 3, 2000, BFS adopted the findings of the administrative law  
4 judge issued in the case of *Green v. Cady and Associates, Inc., dba Crossroads Mobile*  
5 *Homes*, case number 01F-R001004-BFS. In that matter, Green entered into an  
6 agreement with Respondent to purchase a mobile home. Green paid Respondent the  
7 full price of the home through an initial deposit of \$500 followed by a final payment of  
8 \$19,525.00. The contract between the parties was subsequently rescinded.  
9 Respondent represented to Green that he had never cashed the check for \$19,525.00  
10 and that he would keep the \$500.00 deposit. Respondent then went ahead and cashed  
11 the \$19,525.00 check and never returned any portion to Green. The administrative law  
12 judge found that Green had been damaged by Respondent's conduct and  
13 recommended a payout to Green from the recovery fund in the amount of \$20,525.  
14 Again, as required by statute, Respondent's BFS license was suspended pending full  
15 repayment to the recovery fund of the \$20,525.00 amount that had been paid out to  
16 Green.  
17

18 11. On November 3, 2000, BFS adopted the findings of the administrative law  
19 judge in *Copeland v. Cady and Associates, Inc., dba Crossroads Mobile Homes*, case  
20 number 01F-R001003-BFS. In that case, Copeland entered into a sales agreement to  
21 purchase a mobile home from Respondent. Copeland made a \$3,500.00 down  
22 payment. Respondent failed to perform under the sales agreement and further refused  
23 to refund the down payment. The administrative law judge recommended payment  
24 from the recovery fund in the amount of \$3,500.00 and Respondent's license was again  
25 suspended pending repayment of that amount to the fund.  
26

27 12. On November 7, 2000, BFS adopted the findings of the administrative law  
28 judge in *McConnell v. Cady and Associates, Inc., dba Crossroads Mobile Homes*, case  
29 number 01F-R001005-BFS. In that case, McConnell entered into an agreement with  
30 Respondent to purchase a mobile home. Under the contract, Respondent was to



1 deliver the new home, trim it out and complete other items on the home. The  
2 administrative law judge found that Respondent failed to complete certain items on the  
3 home and recommended that the recovery fund pay out \$27,551 to McConnell.  
4 Respondent's license was again suspended pending repayment of that amount to the  
5 fund.

6 13. On November 21, 2000, BFS adopted the findings of the administrative law  
7 judge in *Mericle v. Cady and Associates, Inc., dba Crossroads Mobile Homes*, case  
8 number 01F-R001008-BFS. The administrative law judge found that Mericle had  
9 entered into an agreement with Respondent to purchase a mobile home from  
10 Respondent. Respondent failed to perform under the terms of the contract and the  
11 administrative law judge ordered payment out of the recovery fund in the amount of  
12 \$8,210.00 to Mericle. Respondent's license was again suspended pending repayment  
13 of that amount to the fund.

#### 14 CONCLUSIONS OF LAW

15 1. The Department has the burden of proof in this matter, and the standard of  
16 proof on all issues is by a preponderance of the evidence. *Culpepper v. State*, 187 Ariz.  
17 431, 930 P.2d 508 (App. 1996). A "preponderance of the evidence is such proof as  
18 convinces the trier of fact that the contention is more probably true than not." Morris K.  
19 Udall, *Arizona Law of Evidence*, §5 (1960). It "is evidence which is of greater weight or  
20 more convincing than the evidence which is offered in opposition to it; that is, evidence  
21 which as a whole shows that the fact sought to be proved is more probable than not."  
22 *Black's Law Dictionary*, 1182 (6th ed. 1990).

23 2. Arizona Revised Statutes § 20-290 (C) states in pertinent part that the director  
24 may refuse to accept an application for or issue any license if the director finds "that any  
25 one or more of the following apply to the applicant . . . :  
26

27 \* \* \*

28 (2). A record of dishonesty on the part of the applicant in business or  
29 financial matters.  
30

1 (3). A record of misappropriation, conversion or irregular withholding of  
2 monies belonging to policyholders, insurers, beneficiaries or others and  
3 received in the conduct of business. . . .

4 3. Arizona Revised Statute §20-316(A) provides in pertinent part:

5 A. The director may suspend for not more than twelve months or may  
6 revoke or refuse to renew any license issued under this article if . . . the director  
7 finds that any one or more of the following applies to the licensee:

8 (1). The existence of any cause for which original issuance or any  
9 renewal could have been refused.

10 \* \* \*

11 (2). Willful violation of, or willful noncompliance with, any provision of this  
12 title or any lawful rule or order of the director.

13 \* \* \*

14 (3). The existence of misrepresentation or fraud in obtaining or attempting  
15 to obtain an insurance license.

16 \* \* \*

17 (8). A record of dishonesty in business or financial matters.

18 4. Arizona Revised Statute §20-318 provides that "[a] licensee shall not transact  
19 insurance in this state under an assumed name . . . unless such person shall file in  
20 the office of the director a certificate setting forth the name under which the insurance  
21 is or is to be transacted and the true real full name or names of the person or persons  
22 owning, conducting or transacting the same . . ."

23 5. The Department has shown that grounds existed for which the Director could  
24 have, at the time of the issuance of the various licenses to Respondent, denied the  
25 licenses due to a record of dishonesty and misappropriation or irregular withholding of  
26 funds, namely, earnest money amounts as shown by the findings of fact above.

27 6. The Department has carried its burden with respect to proving a violation of  
28 A.R.S. §20-316(A)(1), (2), (3), and(8) as shown above in Findings of Fact Paragraphs  
29 Two through Thirteen.  
30

1 7. The Department has carried its burden with respect to the allegation that  
2 Respondent violated A.R.S. §20-318. Here, Respondent transacted insurance  
3 business under the name "Express America Insurance." The evidence demonstrates  
4 that no certificate of assumed business name was ever filed with the Department for  
5 "Express America Insurance."

6 8. The extensive pattern of dishonesty and misappropriation as shown through  
7 the evidence adduced by the Department at the hearing merits revocation of the  
8 license in this matter.

9 **RECOMMENDED DECISION**

10 Based on the foregoing the undersigned recommends to the Director of the  
11 Department of Insurance that Respondent's license number 85938 should be revoked  
12 on the effective date of the Director's final order in this matter.

13 Done this day, October 16, 2001.

14   
15 Gregory L. Hanchett  
16 Administrative Law Judge

17 Original transmitted by mail this  
18 16 day of October, 2001, to:

19 Department of Insurance  
20 Charles R. Cohen  
21 ATTN: Curvey Burton  
22 2910 North 44th Street, Ste. 210  
23 Phoenix, AZ 85018

24 By   
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